

**FILED**

**OCT 18 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN BARRAZA-RUIZ, aka JOSE  
BARRAZA-RUIZ,

Defendant-Appellant.

No. 04-10156

D.C. No. CR-02-01876-JMR

MEMORANDUM<sup>\*</sup>

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE BARRAZA-RUIZ,

Defendant-Appellant.

No. 04-10157

D.C. No. CR-00-00207-3-JMR

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, District Judge, Presiding

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted October 11, 2005 \*\*

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

In these consolidated appeals, Jose Barraza-Ruiz appeals his 77-month sentence imposed after pleading guilty to illegal re-entry after deportation, in violation of 8 U.S.C. § 1326, and the revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291.

As to appellant's supervised release revocation in case number 04-10156, we reject appellant's contention that the district court should have sentenced him to concurrent sentences. *See* 18 U.S.C. § 3584. Accordingly, we affirm.

Regarding appellant's § 1326 sentence in case number 04-10157, we reject appellant's contentions. However, because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline's*

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\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

limited remand procedure to cases involving non-constitutional *Booker* error).

**Case number 04-10156 is AFFIRMED.**

**Case number 04-10157 is REMANDED.**